

CHAPTER III: REGULATORY FUNCTIONS

Drafting, reviewing and recommending ordinances, regulations and amendments.

Subdivision and Site Plan Review Regulations

PURPOSE OF SUBDIVISION REGULATIONS (RSA 674:35)

Subdivision control guides municipal development, protects prospective residents and abutting property owners from problems associated with poorly designed areas, and advances the purposes of the police power: to protect the public health, safety and general welfare. Subdivision controls are based on the premise that a new subdivision is not an island but an integral part of the whole community which must mesh efficiently with the municipal pattern of streets, sewers, water lines

“Subdivision” means the division of the lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development.

It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. (RSA 672:14, I)

and other installations that provide essential services and vehicular access. (Peter Loughlin, Volume 15, New Hampshire Practice Series, §29.02.)

Regardless of whether or not a municipality has adopted a zoning ordinance, the legislative body may authorize the planning board to regulate the subdivision of land (RSA 674:35). The planning board must adopt regulations before exercising this power. See RSA 674:36 for a list of provisions that may be included in subdivision regulations.

PURPOSE OF SITE PLAN REVIEW REGULATIONS (RSA 674:43)

In addition to subdivision review authority, municipalities may regulate site plans for non-residential, as well as multi-family, housing development. Site plan review is one of the most useful techniques in modern land use control. It is an important device to ensure that uses that are permitted by the zoning ordinance are constructed in such a way that they fit into the area in which they are being constructed without causing drainage, traffic, lighting, or similar problems.

A site plan may be required to be submitted to the planning board prior to development of a particular tract of land. The plan must show the proposed location of the buildings, parking areas, landscaping, drainage, and other installations on the plot and their relationship to existing conditions such as roads, neighboring land uses, natural features, public facilities, ingress and egress roads, interior roads and similar features.

The authority to review site plans for non-residential and multi-family housing development, whether or not it involves the subdivision of land, may be delegated to the planning board by vote of the municipality’s legislative body, but only in municipalities that have adopted a zoning ordinance and subdivision regulations (RSA 674:43). Site plan review regulations, which are adopted by the planning board, may govern adequate drainage, protection of groundwater quality, provision of “open spaces and green spaces of adequate proportions,” fire safety, and other similar issues. (RSA 674:44).

“Multi-family” is defined as any structure containing more than two dwelling units. Therefore, creation of a duplex house is exempt from site plan regulations.

Similarly, mobile home parks are not subject to site plan review because such parks are a residential use of land and there are no multi-family structures. (RSA 674:43, I)

STEPS TO ALLOW THE REGULATION OF SUBDIVISIONS AND SITE PLAN REVIEW

Before a municipality may regulate the subdivision of land or review site plans within its boundaries, it must (1) establish a planning board; and (2) the planning board must be granted authority by the legislative body to regulate subdivisions and site plans. Further, the board must adopt specific subdivision and site plan review regulations. What follows is a step-by-step guide to the authorization and adoption of subdivision and site plan review regulations.

Step 1. Establish a Planning Board (RSA 673:1)

The municipal legislative body, which is a city or town council, or a town or village district meeting, must first vote to establish a planning board. The composition of a planning board is set forth in RSA 673:2. Board members may be elected or appointed, as determined by the legislative body, but each member must be a resident of the municipality. It is the duty of this newly established board to adopt rules of procedure as well as maintain accurate records of its proceedings. See Chapter I for details on rules of procedure and records for planning boards.

Step 2. Grant Authority (RSA 674:35, I and 674:43, I)

Establishment of a planning board does not confer on it the power to approve or disapprove plans for subdivision of land and site plan review. Separate action by the legislative body is required. In a city, the city charter prescribes the correct form of the ordinance or resolution that authorizes a planning board to regulate subdivisions and site plan review. In a town, an article in the town meeting warrant is required to provide the authorization. The authorizing article may be voted on at the same town meeting that establishes the planning board, or at a later town meeting.

Upon being granted subdivision approval authority by the legislative body, the planning board has the power to regulate the proper arrangement and coordination of streets within subdivisions. However, RSA 674:35 (Power to Regulate Subdivisions) was amended in 2014 to allow municipalities that have granted the planning board subdivision approval authority to delegate to the governing body the authority to approve plans showing the extent to which and the manner in which streets within subdivisions will be graded and improved. It takes approval of a town meeting warrant article or a city council resolution to delegate this authority to the governing body.

Step 3. File Authorization (RSA 674:35, II and 674:43, II)

The municipal clerk, or other official charged with such responsibility, must file a notice with the county register of deeds certifying that the planning board has been authorized to regulate subdivisions and/or site plans, and stating the date of the authorization. It is recommended that the register of deeds be notified again when the planning board has adopted subdivision and site plan review regulations since the board cannot act on applications for subdivision or site plan review before the regulations are prepared and adopted.

Step 4. Prepare Subdivision and Site Plan Review Regulations (RSA 674:36 and 674:44)

Subdivision regulations should:

- a. Provide against the scattered or premature subdivision of land where such public services as water supply, transportation, fire protection or schools are lacking, or the excessive expenditure of public funds would be required to provide them;
- b. Provide for the harmonious development of the municipality and its environs;

It is important to note that this section of the statutes is permissive. If the planning board wishes to address the issues, the subdivision regulations must specifically include each item listed.

- c. Provide that streets be adequate to handle existing and prospective traffic and be coordinated within the subdivision and in relation to existing streets;
- d. Provide for adequate open spaces, parks, and recreation areas to serve the needs of the neighborhood;
- e. Require that lot sizes comply with zoning requirements and be sufficient to handle on-site sewage disposal, if necessary;
- f. Require that the land be suitable for building purposes;
- g. Encourage the installation of renewable energy systems such as solar and wind, and protect access to energy sources by:
 - regulating the orientation of streets, lots and buildings,
 - establishing maximum building height and minimum setback requirements,
 - limiting the type, height and placement of vegetation, and
 - encouraging the use of solar skyspace easements (RSA 477);
- h. Provide for efficient and compact subdivision development to promote retention and public usage of open space and wildlife habitat;
- i. Create conditions favorable to the health, safety, convenience or prosperity of the municipality;
- j. Require innovative land use controls when supported by the master plan; and
- k. Include waiver provisions (see Chapter IV for more information on waivers).

Note that RSA 674:36, IV prohibits municipalities from enacting subdivision regulations that require the installation of fire suppression sprinkler systems in one- or two-family residences. However, that statute was amended in 2013 to recognize that applicants may voluntarily offer to install fire suppression sprinkler systems in one- or two-bedroom residences and, if the offer is accepted by the planning board, installation of such systems shall be required and shall be enforceable as a condition of the approval. The applicant or the applicant's successor in interest may substitute another means of fire protection in lieu of the approved fire suppression sprinkler system, provided that the planning board approves the substitution.

Site Plan Review Regulations

Local site plan review regulations which must be adopted by the planning board must include:

- a. The procedures the board must follow in reviewing site plans;
- b. A provision defining the purpose of site plan review (at a minimum, the general language provided in the statute should be incorporated);
- c. A specification of the general standards and requirements that must be met "including appropriate reference to accepted codes and standards for construction;"
- d. Provisions for guarantees of performance, including bonds or other security; and
- e. Waiver provisions (see Chapter IV for more information on waivers).

Additionally, site plan review regulations may:

- a. Provide for the safe and attractive development or modified use of the site and protect against conditions that could pose a danger or injury to health, safety or prosperity due to:
 - inadequate drainage that may contribute to flooding,
 - inadequate protection of groundwater quality,
 - increased undesirable, yet preventable, noise, air, or other pollution, and
 - inadequate fire safety, prevention or control;

- b. Provide for the harmonious and aesthetically pleasing development of the municipality and its environs;
- c. Provide for adequate proportions of open spaces and green spaces;
- d. Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;
- e. Require that streets be suitably located and sized to accommodate existing and future traffic and access to emergency vehicles and services;
- f. Require that plats depicting new streets or the resizing of existing streets be submitted to the planning board for approval;
- g. Require that land be suitable for building purposes without posing health risks;
- h. Include conditions that protect the health, safety, convenience or prosperity of the municipality;
- i. Require innovative land use controls when supported by the master plan; and
- j. Require preliminary review of site plans.

Subdivision and site plan review regulations should evolve from the overall planning process that starts with preparation of the master plan. Subdivision and site plan regulations control the design of the subdivision and/or development itself, not the location in the community. Zoning regulations establish permitted uses and density limits for the various districts based on the development patterns recommended in the master plan.

Regional planning commissions or planning consultants may provide assistance with the preparation of subdivision and site plan review regulations appropriate for the municipality. Model subdivision and site plan review regulations, which may serve as a guide for those boards interested in updating their regulations, can be found in the Subdivision and Site Plan Review Handbook prepared by Southwest Region Planning Commission in 2001, available at: <http://www.swrpc.org/files/data/library>

Step 5. Adopt Subdivision and Site Plan Review Regulations (RSA 675:6)

The statutory procedures to be followed for the adoption of subdivision and site plan review regulations include public notice, a public hearing, and a vote by the planning board to adopt the regulations. The planning board may subsequently amend the regulations through the same basic procedures.

Notice of Hearing

RSA 675:7 requires that the notice of a public hearing to adopt or amend subdivision or site plan review regulations be both published in a newspaper of general circulation in the municipality and posted in at least two public places within the city or town. The notice must be given at least 10 calendar days before the date of the hearing. The statutes specifically provide that the day the notice is posted and the day the hearing is held cannot be included in the 10-day period. The full text of the proposed regulations does not need to be posted or printed in the newspaper as long as the notice tells where a copy of the proposal is available for the public to read. If the regulations are extensive, it is recommended that sufficient copies be made available so residents may have copies to review at their leisure.

Public Hearing

The public hearing is opened by the planning board chair who should give a brief explanation of the regulations and their purpose. Ample time should be allowed for questions, comments and suggestions by those in attendance. After the public has had the opportunity to be heard, the chair

should close the public hearing. A tape recorder is useful to ensure that the proceedings of the hearing are accurate, and then used to prepare the written record.

Vote to Adopt

At the close of the public hearing, or at a subsequent meeting, if more appropriate, the planning board should vote on whether or not to adopt the proposed regulations. Comments made at the hearing should be discussed and changes made, as the board deems necessary, in response to such comments. If major revisions are made that were not discussed at the public hearing, it might be advisable to hold a second hearing to inform the public before final adoption.

The affirmative vote of the majority of the board members is necessary. It is strongly recommended that the members who vote on the motion to adopt the regulations be the ones who were present at the public hearing to gain the benefit of the public discussion. A roll call vote may be held, although it is not required, so that the position of individual board members is clear. The planning board rules of procedure may establish local policy that addresses these issues.

Amendment of Subdivision and Site Plan Review Regulations

As a planning board gains experience in using the adopted subdivision and site plan review regulations, the need for changes to improve the effectiveness or to address additional areas of concern may become apparent. In addition, the regulations should be reviewed at the end of each state legislative session to determine if any amendments are required as a result of changes in state law.

The procedures for amending subdivision and site plan review regulations are the same as for original adoption – preparing the proposal, noticing and holding a public hearing, addressing the comments made, voting to adopt the amendments.

Step 6. File Certified Copy (RSA 675:6, III)

Subdivision and site plan review regulations, and any subsequent amendments adopted by the planning board, do not have legal force and effect until copies are certified and filed with the city or town clerk. To be certified, the regulations must be signed by a majority of the planning board members.

STATUS OF PLATS AFTER ADOPTION OF SUBDIVISION AND SITE PLAN REVIEW REGULATIONS

Subdivision Regulations

When a municipality has authorized the planning board to review subdivision applications, and the board has adopted the appropriate regulations, two requirements must be met before a plat can be filed or recorded with the county register of deeds. The plat must have been:

1. Prepared and certified by a licensed land surveyor since July 1, 1981, or by a registered land surveyor between January 1, 1970 and June 30, 1981; and
2. Approved by the planning board and endorsed in writing, as specified in the board's regulations (RSA 674:37).

Site Plan Review Regulations

While subdivision plats are required by statute to be recorded at the registry of deeds after approval by the planning board, there is no such requirement for approved site plans. However, planning boards have the option of including such a requirement in the site plan review regulations (see RSA 674:39, I), which is recommended.

Special Site Plan Review Committee

Under RSA 674:43, III, the town meeting may authorize the planning board to delegate its site review powers and duties in regard to minor site plans to a committee of technically qualified administrators chosen by the planning board from the departments of public works, engineering, community development, planning, or other similar departments in the municipality.

This special site review committee may have final authority to approve or disapprove site plans reviewed by it but, if this power is granted, the decision of the committee may be appealed to the full planning board within 20 days of the committee's decision. All of the planning board's normal procedures under RSA 676:4 shall apply to the actions of the special site review committee, except that the committee shall act to approve or disapprove an application within 60 days after its submission.

If the municipality does authorize a special site review committee, the planning board must adopt or amend its regulations to specify application, acceptance, and approval procedures, and define what size and type of site plans may be reviewed by the site review committee.

ZONING ORDINANCE

In New Hampshire, RSA 674:16 gives municipalities the authority to zone. Zoning involves regulating the size, location and use of buildings and other structures for the purpose of promoting the health, safety and general welfare of the community. Traditionally, these purposes are achieved by dividing the municipality into districts with the goal of separating what are thought of as incompatible uses. In each district, some uses are permitted as a right, some are prohibited, and others are allowed only by special exception or conditional or special use permit. More modern zoning techniques, however, encourage mixed use zoning in which residential and commercial uses are permitted in specified districts.

A copy of the regulations and amendments should also be sent to the NH Office of Energy and Planning to be placed in a central file.

Failure to comply with this requirement does not invalidate the regulations.

(RSA 675:9)

In addition to prescribing the districts in which a use may be located, a zoning ordinance may impose requirements on a specific use, such as size and position of signs and special setbacks or screening for junkyards.

Specifically, RSA 674:16 provides that the zoning ordinance shall be designed to regulate and restrict:

- The height, number of stories and size of buildings and other structures;
- Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;
- The density of population in the municipality; and
- The location and use of buildings, structures and land used for business, industrial, residential or other purposes.

RSA 674:17 states that a zoning ordinance must be designed for the following purposes:

- To lessen congestion in the streets;
- To secure safety from fires, panic and other dangers;
- To promote health and the general welfare;
- To provide adequate light and air;
- To prevent the overcrowding of land;
- To avoid undue concentration of population;

- To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
- To assure proper use of natural resources and other public requirements;
- To encourage the preservation of agricultural lands and buildings; and
- To encourage the installation and use of solar, wind, or other renewable energy systems.

The grant of power to adopt a zoning ordinance includes the power to adopt innovative land use regulations (RSA 674:16, II), which are discussed in more detail later in this chapter. Innovative land use regulations include, but are not limited to those listed in RSA 674:21, I(a)-(n), including impact fees. RSA 674:21, V defines “impact fee” as a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of certain capital facilities which are listed in the statute, owned or operated by the municipality. Before a municipality can impose impact fees, it must adopt a Capital Improvements Plan pursuant to RSA 674:5-7.

Enactment and Amendment of the Zoning Ordinance

A zoning ordinance may be enacted or amended by ballot vote of a majority of the voters present and voting at the annual or special town meeting where the matter is taken up. However, a properly filed protest petition that meets all of the requirements of RSA 675:5 may result in an increase of the required affirmative vote for enactment to two-thirds of the voters present. A zoning ordinance may be enacted or amended at either the annual town meeting or at a special town meeting, although a voter-petitioned amendment may only be presented at the annual meeting. In cities and town council towns, charter provisions provide the procedures required for enacting zoning ordinances and amendments.

ZONING AMENDMENT PROCEDURES

The planning board is responsible for preparing and, in towns, holding public hearings on proposals to adopt or revise the zoning ordinance. Also in towns, a zoning ordinance or revision of the ordinance must then be adopted by ballot vote at town meeting. In cities and town council towns where the municipal charter determines how a zoning ordinance is to be adopted or revised, a public hearing is still required for all zoning ordinances and amendments (RSA 675:2-3).

RSA 674:1 outlines the duties of the planning board. Paragraph V of that statute states that the planning board “...*may, from time to time, recommend to the local legislative body amendments of the zoning ordinance...*”

Zoning ordinance amendments may be initiated in three distinct ways. First, as referenced above, the planning board may propose amendments to the zoning ordinance. Second, the governing body (board of selectmen, village district commission, city or town council) has authority to propose zoning amendments. Third, 25 or more voters of the municipality can petition for a zoning amendment. Regardless of how the zoning amendment is initiated, it must be voted on at town meeting (RSA 675:4) or in a manner prescribed in the municipal charter.

In all three situations, the planning board must hold a public hearing with prior notice as provided in RSA 675:7. After the public hearing, the planning board must, by vote, determine the final form of the ordinance, amendment, or amendments to be presented to the voters. If, after the public hearing, the planning board makes substantive changes to the proposed zoning amendment, it must hold a second public hearing.

The planning board must provide the town clerk with final wording of the zoning question not later than the fifth Tuesday before the annual or special meeting.

A special town meeting to adopt, amend or repeal a zoning ordinance, historic district ordinance or a building code in an official ballot referendum town (SB 2) needs only to consist of a session for voting by official ballot. A deliberative session is not required to consider a zoning change. However, this would not apply to special meetings to consider the adoption of emergency temporary zoning under RSA 675:4-a.

NOTICE REQUIREMENTS

When an amendment is proposed, the proposing body must submit the properly drafted article to the planning board. The planning board must hold at least one public hearing prior to the vote at the annual or special meeting. Notice of the planning board hearing must be posted in two places and published in a locally circulated newspaper at least 10 days in advance of the hearing. When calculating the 10-day notice period, the day of posting and the day of the planning board hearing may not be included. If the planning board anticipates a second hearing on the matter, there must be 14 days between the two hearings, and the 10-day notice requirement again applies. Notice requirements are found in RSA 675:7.

If the zoning amendment is proposed by the governing body or submitted by voter petition, the planning board may not make substantive changes to the proposal; however, a notation must appear on the ballot stating whether the planning board approves or disapproves of the proposed amendment.

See RSA 675:3, VIII (governing body zoning amendment) and
RSA 675:4 (petitioned zoning amendment).

Several new notice requirements for zoning amendment hearings took effect in 2014 when the legislature amended RSA 675:7. They are:

1. Notice must be sent to anyone who owns property in the municipality and requests to be notified of zoning hearings. Notice shall be made at no cost to the person making the request, and can be made either electronically or by first-class mail.
2. Notice must be sent by first-class mail to the owners of each property affected by a zoning amendment that would change a boundary of a zoning district, but only if the boundary change would affect 100 or fewer properties.
3. Notice must be sent by first-class mail to the owners of each property in a zoning district if the proposed amendment would change minimum lot sizes or the permitted uses in that district and only if the zoning district includes 100 or fewer properties.

When notice is sent by first-class mail, it should be sent to the address used for mailing local property tax bills.

These new notice requirements do not apply to petitioned zoning amendments.

To assure compliance with all notice requirements, consider the following: the date of the annual or special meeting; the fifth Tuesday before that date; time for two planning board hearings 14 days apart; 10 days of notice before each planning board hearing; publication dates of local newspapers; and that voter petitions are timely only if they are received between 120 and 90 days before the annual meeting. Local officials should be mindful of these dates and deadlines to avoid making process-related errors that may invalidate adoption of an amendment.

EARTH EXCAVATIONS

Since 1971, when RSA 155-E was enacted, New Hampshire municipalities have had authority to develop regulations governing land excavations. The purpose was to protect the health, safety and general welfare of the public, to protect the environment, and to recognize safety hazards involved with open excavations. RSA 155-E regulates the permitting process, allowable excavations, and the rules of procedure for reviewing land excavation applications.

Land Excavation Permits

No landowner shall permit excavation of earth on his/her property without first obtaining a permit. (There are, however, exceptions to the permitting process, which are explained in detail below.) The excavation permit must be obtained from the regulator, which in most municipalities is the planning board. However, towns may, by town meeting vote, designate the board of selectmen or zoning board of adjustment as the regulator. If there is no planning board, then the board of selectmen is the regulator (RSA 155-E:1). For the purposes of this handbook, the planning board is considered to be the regulator.

Existing Excavations (RSA 155-E:2, I)

A permit is not required of the owner of an excavation that was in existence before August 24, 1979 where sufficient volume of material had been removed during the two-year period prior to August 24, 1979. The excavation site is exempt from local zoning and other ordinances as long as it was in compliance at the time the excavation first began. The excavation area can only be expanded to contiguous property and property in common ownership with the excavation site as of August 24, 1979 and has been appraised and inventoried for tax purposes as part of the same tract as the excavation site.

In order for existing operations (as defined above) to be grandfathered, the owners and operators were required to file a report with the planning board within one year after receiving notice of this requirement and no later than two years from August 4, 1989. The report should have included:

- The location of the excavation and the date the excavation first began;
- A description of any expansions applied to the site that are permissible under RSA 155-E:2, I(b);
- An estimate of the area that had been excavated at the time of the report; and
- An estimate of the amount of commercially viable earth materials still available on the parcel.

Stationary Manufacturing Plants (RSA 155-E:2, III)

A permit is not required from an excavation site that on August 4, 1989, was contiguous to, or contiguous to land in common ownership with, a stationary manufacturing plant in operation as of August 24, 1979.

Highway Excavations (RSA 155-E:2, IV)

A permit is not required for an excavation performed for lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or a consultant for the government with a contractual agreement for construction, reconstruction or maintenance. A copy of the pit agreement executed by the owner and the governmental unit shall be filed with the planning board prior to the start of the excavation.

Highway excavations are not exempt from local zoning or other applicable regulations, and the governmental unit shall certify the following to the planning board before beginning such excavation:

- The excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, RSA 155-E:5, and RSA 155-E:5-a.
- The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter, unless requested by the approving abutter.
- The excavation shall not be unduly hazardous or injurious to the public welfare.
- Existing visual barriers in the areas specified under RSA 155-E:3, III shall not be removed, except to provide access to the site.
- The excavation will not damage a known aquifer as mapped by the United States Geological Survey (USGS).
- All required permits have been obtained by state and federal agencies.

Incidental Excavations – RSA 155-E:2-a

No permit is required for the following types of incidental excavations:

- Excavations that are incidental to the construction or alteration of a building or structure or a parking lot, including a driveway, on a portion of the premises where the removal occurs. No excavation is allowed until all state and local permits required for construction have been obtained.
- Excavation that is incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustment.
- Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.

An abutter of a site taken by eminent domain or other governmental taking where construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification has been sent to the appropriate local official.

Operational and Reclamation Standards (RSA 155-E:4-A)

All excavation operations, regardless of the need for a permit, must follow certain standards for both operating and reclaiming the site. The law refers to these standards as “minimum” and “express,” which means that if an excavation needs a permit, the standards spelled out in RSA 155-E are considered to be the bare minimum, although the planning board may require additional standards. If the excavation does not need a permit, then the standards of RSA 155-E:4-a and 5 are considered to be the only ones the board can expressly require.

Operational Standards

- No excavation shall be permitted below road level within 50 feet of the right of way of any public highway unless the excavation is for the purpose of that highway.
- No excavation shall be permitted within 50 feet of a disapproving abutter, nor within 150 feet of any dwelling that exists or for which a building permit has been issued at the time of the excavation.
- No excavation shall be permitted within 75 feet of any great pond, navigable river or any other standing body of water 10 acres or more in area.

- No excavation shall be permitted within 25 feet of any other stream, river or brook that normally flows throughout the year, or any naturally occurring standing body of water less than 10 acres, prime wetlands or any other wetland greater than 5 acres.
- Vegetation shall be maintained or provided within the peripheral areas.
- Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods.
- No fuels, lubricants, or other toxic or polluting materials shall be stored onsite unless in compliance with state laws or rules pertaining to such materials.
- A fence or other suitable barricade shall be erected to warn of danger or limit access to the site where temporary slopes will exceed a grade of 1:1.
- The excavator shall file a reclamation bond or other security approved by the planning board prior to the removal of topsoil or other overburden material.

In addition to meeting the standards listed in RSA-E:4-a, all state environmental standards and required permits should be met and obtained.

Reclamation Standards

Within 12 months of completion of the excavation, or upon expiration of the permit issued for excavation, the owner of the land shall have completed the reclamation of the areas affected by the excavation and meet the following standards, as provided in RSA 155-E:5:

- Topsoil, strippings, or soil capable of sustaining vegetation with appropriate seedlings or grass shall be spread over the areas affected by the excavation except for rock ledges.
- Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- Except for exposed ledges, all slopes shall be graded to natural repose for the type of soil they are composed of so as to control erosion.
- Elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety.
- The topography of the site shall be graded so as to allow the natural drainage of water from the site.

Exceptions Made by the Regulator (RSA 155-E:5-b)

The planning board may grant an exception to the minimum and express operational and reclamation standards after a public hearing, for good cause shown. The board's written decision shall state the specific standards that have been relaxed and any additional conditions or standards that must be met by the applicant.

Application for the Permit (RSA 155-E:3)

Unless one of the exceptions discussed above applies, prior to excavation the property owner must apply to the planning board for a permit, with a copy to the conservation commission, if one has been established by the municipality. If the proposed excavation site is located in an unincorporated area, application is made to the county commissioners. The signed and dated application shall include:

- The name and address of the owner of the land to be excavated, the name of the person performing the excavation, and all abutters to the excavation site.

- A sketch and description of the location and boundaries of the proposed excavation, the number of acres to be involved, and the municipalities and counties in which the site lies.
- A sketch and description of access and visual barriers to the public highways to be utilized by the proposed excavation.
- The estimated duration of the project and the depth, breadth and slope of the proposed excavation.
- The elevation of the highest annual average groundwater table within or next to the proposed excavation.
- The reclamation plan for the site once excavation is complete.
- Specific actions to be taken in the handling of fuel and chemicals on site as well as dust control, traffic, noise control and abatement.
- Other information and studies deemed necessary by the planning board.

If the applicant changes the scope of the project by altering the size or location of the excavation, the rate of removal, or the plan for reclamation, the owner shall submit an application for amendment of the excavation permit to the planning board. The application for amendment will be subject to the same approval process as the original permit (RSA 155-E:6).

Public Hearing (RSA 155-E:7)

The planning board shall conduct a public hearing within 30 days of receiving a permit application or an amended excavation permit application. Notice shall be sent to all abutters 10 days prior to the public hearing, not including the day of posting or the day of the hearing. Notice shall include the grounds for the hearing as well as the date, time and place of the hearing. Notice shall be posted in at least three public places and published in a local newspaper. Within 20 days of the hearing, the board shall render a decision approving or disapproving the application, giving reasons for disapproval.

Issuance of Permit (RSA 155-E:8)

The planning board may issue a permit if the excavation meets all statutory standards, is not a prohibited excavation as listed in RSA 155-E:4, and the applicant has paid the excavation fee determined by the board, which may not exceed \$50. A copy of the permit shall be promptly displayed at the excavation site. The permit shall state the date it expires and it may contain any conditions set forth by the board during the review process.

Appeal (RSA 155-E:9)

Any interested person affected by the approval or disapproval of an excavation application can appeal to the planning board for a rehearing on the decision. The motion for rehearing shall state the grounds for appeal and shall be filed within 10 days of the date of the original decision. Within 10 days, the board shall grant or deny the request for rehearing and if the request is granted, a rehearing shall be scheduled within 30 days.

Enforcement (RSA 155-E:10)

The board may revoke or suspend the permit of any person who is in violation of the provisions of the permit or any conditions listed in RSA 155-E. Such suspension or revocation shall be subject to rehearing and appeal in accordance with RSA 155-E:9. Fines, penalties, and remedies for violations shall be the same as for violations of the planning and zoning statutes (see RSA 676:15, 676:17, 676:17-a, and 676:17-b). In addition, the planning board, or any person directly affected, may seek a

superior court order requiring the excavator to cease and desist from violating any provision of the permit. If the superior court issues an order, attorney fees and other fees incurred in seeking the order may be awarded to the board. To ensure compliance with the order, the board or duly appointed agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

Regulations (RSA 155-E:11)

The planning board may adopt regulations to carry out the provisions of RSA 155-E, including adopting a permit fee schedule. Whenever the locally adopted regulations differ from the provisions of RSA 155-E, the greater restriction or higher standard shall be controlling, except that the local regulations cannot supersede the sole applicability of express standards for operation and reclamation under RSA 155-E:2, I, III and IV.

Locally adopted regulations may include provisions for protection of water resources consistent with the municipality's water resource management and protection plan. If the regulation prohibits excavations below a stated height above the water table, the regulations shall also contain a procedure for an exception to the rule if the applicant demonstrates that the excavation will not adversely affect water quality. The board may also impose fees to cover public hearing costs and its administrative expenses, review of documents and other matters that may be required by a particular application.

DRIVEWAY REGULATIONS (RSA 236:13)

RSA 236:13 gives power to municipalities to control how private roads and driveways are connected to local highways. Pursuant to this statute, a planning board that has been granted the power to regulate the subdivision of land shall enact regulations using the same procedure as for subdivision regulations (adoption by the planning board following notice and a public hearing). Driveway regulations may address a number of subjects such as width, angles, slopes and grades of connection, curbs, ditching, culvert standards to prevent erosion and preserve highway drainage, adequate lines of sight to prevent safety hazards, and limiting the number of access points per parcel.

The statute provides that a planning board may delegate the day-to-day administration of driveway regulations, including driveway applications, to a highway agent or code officer.

In many smaller towns, this authority is often delegated to the board of selectmen.

The Owner's Duties and Rights

Under RSA 236:13, VI, all private driveway connections, including structures like culverts, remain the continuing responsibility of the landowner, even if located within the highway right-of-way and even if the driveway connection pre-dates the town's permit system. If any driveway connection threatens the integrity of the highway due to plugged culverts, erosion, siltation, etc., the planning board or its designee can require the owner to repair it. If the owner fails to make the repairs, the town may perform the work and assess the costs to the owner.

An owner's right of access can be limited by regulation, but it can't be denied altogether without paying compensation. A town's exercise of authority under RSA 236:13 "cannot greatly impair or prohibit the use of the access unless it is purchased or taken by eminent domain with adequate compensation to the owner." A landowner's vested right of access consists only of reasonable access to the public highway system in general, not of a particular site.

The State's Role

The New Hampshire Department of Transportation (DOT) issues driveway permits for all proposals for access to the state highway system. To improve the coordination of local and state planning along the state's road system, the DOT has instituted a process to better involve local officials in the permitting process. The DOT has developed a Memorandum of Understanding (MOU), which is an agreement between the DOT and the municipality to coordinate the review and issuance of driveway permits to access state roads. The MOU contains a number of requirements for the municipality and the DOT:

- The municipality must develop, adopt and enforce access management standards for state highways that comply with best management practices for access management.
- The municipality can develop site- or parcel-specific access management plans for highway corridors or segments.
- The municipality must notify the DOT District Engineer when it receives a development proposal that would require a state driveway permit and solicit input on the design.
- The municipality shall require that all access points comply with its adopted access management standards and any applicable site-specific access plans.
- The municipality must inform the DOT of any waivers or variances from the access management standards or plans prior to local approval, and provide appropriate notice for comments.
- The DOT will provide information and technical assistance to the municipality in developing access management standards and site/parcel-specific plans.
- The DOT will not approve driveway permits that do not conform to the local access management standards or plans, except with the consent of the municipality.
- The DOT district engineer shall notify the municipality and transmit copies of all driveway access permit applications to the planning board.
- The DOT will withhold final action on any driveway access permit until the planning board has formally approved the access plan for the development.
- The DOT must notify the municipality if it intends to issue a driveway access permit that is not in conformance with the adopted access management standards or parcel-specific plan.
- All corridor or site-specific access management regulations or plans must be filed with the DOT.

It is highly recommended that all municipalities in the region consider entering into an MOU with the DOT. In addition, municipalities should develop a permitting process for driveways accessing local roads. Such permits can assist with the implementation of access management techniques.

For high-volume commercial connections, the DOT may require the applicant to install turn lanes or signals on the public highway itself. In towns and cities, these issues are more commonly handled through subdivision and site plan review, or through the impact fees enacted by a zoning ordinance. (RSA 674:21)

STATE MINIMUM DRIVEWAY STANDARDS

RSA 236:13 contains a few standards that apply regardless of what local regulations may require, or whether there are local driveway regulations. This statute applies to local as well as state highways. Some of the minimum standards are:

- No driveway connection can be more than 50 feet wide; however, it can be flared to accommodate the turning radius of vehicles expected to use the particular driveway, entrance, exit or approach.
- No parcel of land can have more than one driveway connection unless it is proven that there is a 400-foot safe sight distance in both directions at a height of 3 feet, 9 inches above the pavement.
- No parcel of land can have more than two driveway connections unless that parcel’s highway frontage exceeds 500 feet.

INNOVATIVE LAND USE CONTROLS (RSA 674:21)

RSA 674:21 provides municipalities with a wide range of options to use in their efforts to shape land development in ways that reflect the vision of their master plans, and to deal more effectively with growth-related issues.

The use of “innovative zoning” techniques enables municipalities to adopt land use controls that allow for greater flexibility and creativity within a zoning ordinance. These controls can be used to implement more sustainable development planning principles and practices. RSA 674:21 contains a laundry-list of possible options for zoning. The list is not exhaustive and leaves the door open for municipalities to develop innovative land use controls that are not listed (note that the language states: “Innovative land use controls may include, but are not limited to...”).

Below are brief descriptions of some of the innovative land use controls that are included in the statute and ideas for other land use controls that municipalities may consider. Included here are short and simple explanations of each innovative technique. Other publications and sources should be consulted for a more in-depth explanation of each land use control.

A community has the option to make an innovative land use control a mandatory requirement when supported by the master plan (RSA 674:21, II). These ordinances must also contain within them the standards to guide the person or board that administers the ordinance. If the administration of the ordinance is not vested with the planning board, any proposal submitted under this section must be reviewed by the planning board prior to final consideration by the administrator.

TIMING AND PHASED DEVELOPMENT

The Innovative Land Use Controls statute was amended in 2015 to define “phased development,” a term that has been included in the statute for many years. The new definition is in RSA 674:21, IV(c). It applies to development phases of projects that are not intended for use in the context of growth management or a temporary growth moratorium ordinance. In the innovative land use control context, phased development means:

“...a development, usually for large-scale projects, in which construction of public or private improvements proceeds in stages on a schedule over a period of years established in the subdivision or site plan approved by the planning board. In a phased development, the issuance of building permits in each phase is solely dependent on the completion of the prior phase and satisfaction of other conditions on the schedule approved by the planning board. Phased development does not include a general limit on the issuance of building permits or the granting of subdivision or site plan approval in the municipality, which may be accomplished only by a growth management ordinance under RSA 674:22 or a temporary moratorium or limitation under RSA 674:23.”

When the timing or phasing of development is necessary to allow municipalities to work with developers to ensure that growth occurs at a reasonable rate and that community services can

adequately provide for the needs of new residents, phased development must be contained within a zoning ordinance enacted under RSA 674:22 (Growth Management; Timing of Development).

INTENSITY AND USE INCENTIVE

The traditional approach to regulating density is to assign a density, typically the same as the minimum lot size for a single family home, to each zoning district. Innovative approaches such as lot size averaging or density based on a scoring of the attributes of the land enable more effective implementation of a municipality's master plan.

TRANSFER OF DENSITY RIGHTS

A form of transfer of development rights, the transfer of density rights attempts to establish within a municipality a mechanism for trading the density of allowed development between zones designated for low density to areas of high density. The technique extracts a portion of the additional land value created when an area is 'up-zoned' (for example, in establishing a mixed-use village zone, new redevelopment zone, or transit-oriented development zone) as a development fee paid into a municipal conservation fund which is, in turn, used to purchase some or all of the development rights of land located in designated conservation areas. It is less cumbersome to administer and track than conventional transfer of development rights because direct linkage of land in sending and receiving zones is not necessary.

PLANNED UNIT DEVELOPMENT

Planned unit developments (PUD) are good options for municipalities to use to promote the efficient use of land and utilities by providing a pattern of development different from a "conventional" one in which there is a division of separate lots for each structure. This type of regulation can be used for residential, commercial, or industrial developments. The developments are designed so that the developer has flexibility in placing units and accessory buildings, roadways and other utilities while allowing the site to have usable open space and preserve important natural features. The site development is based upon a comprehensive, integrated and detailed plan rather than the specific constraints applicable to piecemeal lot-by-lot development under conventional zoning. A PUD should improve the quality of new development by encouraging aesthetically attractive features and promoting quality site and architectural design.

OPEN SPACE, CLUSTER, AND CONSERVATION SUBDIVISION

Open space, cluster and conservation-style subdivisions can be an important tool in promoting land and open space conservation while fostering more efficient use of land for development. This type of development preserves a large amount of undeveloped land in exchange for developing more intensely on a smaller area. A number of recent models have been developed over the past several years that attempt to make this form of development more attractive. In addition, some municipalities are now mandating this form of development in areas with critical habitat or other high natural resource value.

PERFORMANCE STANDARDS

Performance standards recognize that traditional zoning and the segregation of uses does not always work, giving rise to special exceptions and rezoning. Performance standards allow land to be developed not on the basis of rigid zoning standards, but on the physical characteristics and operations of the proposed uses. Land development under performance standards is then based on certain characteristics of development evaluated against predetermined criteria and standards.

Performance standards can include traffic generation, noise, lighting levels, stormwater runoff, loss of wildlife or vegetation, or even architectural style.

ENVIRONMENTAL CHARACTERISTICS ZONING

Environmental characteristics zoning allows municipalities to protect natural resources or features based on scientific evidence and community input. Types of resources that can be protected include aquifers, wetlands, floodplains, wildlife habitat, groundwater, and other environmental characteristics.

INCLUSIONARY ZONING

Inclusionary housing programs are a means of encouraging or requiring private developers to provide housing for moderate, low-income, and very low-income households. Inclusionary housing functions by granting zoning exemptions and density bonuses to developers that permit building at a higher density if a portion of the proposed development is reserved for elderly, handicapped, or targeted lower-income households. Inclusionary housing provisions are only applicable in municipalities willing to use density bonuses as a housing development incentive for a recognized community need. In New Hampshire, inclusionary housing programs are voluntary. Depending on the zoning ordinance, developers interested in applying for a density bonus apply either to the zoning board of adjustment or to the planning board. A municipality does not fulfill its obligation to provide a reasonable opportunity for affordable housing through the adoption of a voluntary inclusionary zoning ordinance that relies on incentives that will make workforce housing developments economically unviable.

ACCESSORY DWELLING UNIT STANDARDS

Accessory Dwelling Units (ADU) can address a number of housing needs within a community. ADUs are one way that a municipality can provide for more affordable housing or elderly housing. ADUs can provide flexibility in household arrangements to accommodate family members or nonrelated people in a permitted, owner-occupied, single-family dwelling, while maintaining aesthetics and residential use compatible with homes in a neighborhood. **Until June 1, 2017, municipalities may regulate ADUs through innovative land use controls under RSA 674:21. However, as of that date, new ADU state laws take effect requiring all municipalities to allow internal or attached ADUs in all zoning districts where single-family dwellings are permitted. The new ADU requirements can be found in RSA 674:71 through RSA 674:73. The new laws give municipalities several options in how they regulate ADUs, so it is strongly recommended that planning boards amend their municipality's current ADU regulations. If ADUs are not currently addressed in the zoning ordinance, adoption of a new ADU ordinance is recommended.**

IMPACT FEES

Impact Fees are regulated by RSA 674:21, V. These fees can be charged to cover the costs of capital improvements that are necessitated by new developments. Impact fees may only be charged for water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; municipal road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of the capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space. All impact fees shall be assessed at the time of planning board approval of a subdivision or site plan or, when no planning board approval is required, the issuance of a building permit or other appropriate

permission to proceed with development. The maximum time that an impact fee can remain unexpended is 6 years. RSA 674:21, V was amended in 2012 to create two new provisions: (1) a reporting requirement and (2) an amnesty provision for the prior collection of impact fees for improvements to state highways.

VILLAGE PLAN ALTERNATIVE SUBDIVISION

RSA 674:21, I(n), Village Plan Alternative Subdivision, enables towns to adopt this zoning and regulatory technique to encourage the preservation of open space and the efficient use of land and public and private infrastructure. There are three key features of the village plan alternative. First, the entire density permitted by existing land use regulations must be located within 20 percent or less of the entire parcel available for development. The remaining 80 percent is to be used for conservation, recreation, or agricultural uses. Second, the applicant must grant an easement to the municipality that restricts development and specifies that the restrictions are enforceable by the municipality. The village plan alternative must also comply with existing subdivision regulations relating to emergency access, fire prevention, and public health and safety, including setback requirements for wells, septic systems or wetlands requirements imposed by the Department of Environmental Services; however, lot size, frontage and setback requirements, as well as density regulations, shall not apply. Third, an application made under the village plan alternative ordinance must be given expedited review. See RSA 674:21, VI for more details.

Other Innovative Land Use Controls

Economic growth and development can present opportunities for New Hampshire but if managed poorly can place additional burden on communities and their natural resources. Innovative land use techniques, used as a whole or individually, can help municipalities grow in a way that is more consistent with their vision while protecting their natural resources and community character. While the following are not specifically identified in RSA 674:21, the use of innovative land use controls is unlimited.

RIDGELINE AND STEEP SLOPE DEVELOPMENT

Preserving rural character is a top priority for most small towns in New Hampshire and undeveloped hillsides are an essential component of a town's local identity. The steep slopes ordinance can identify regulatory and voluntary approaches that control or manage development on steep slopes. A national, regional, and local literature review should be conducted. Typical issues such as ridge-line visibility, aesthetics, and erosion and flooding that would potentially damage water quality may be explored, as well as any other related issues.

HABITAT PROTECTION

This technique ties together current "best practice" voluntary and regulatory measures to promote land stewardship for habitat protection. The approach relies on the science-based identification of critical habitat based on wildlife and co-occurrence mapping, as well as regional and local wildlife studies. Regulatory measures that focus on the landscape level as well as the site level can be included. At the site level, these regulatory measures include recommended best practices for low-impact site design, including drainage, tree protection, and protection of riparian areas. Regulatory measures at the landscape level include development density and location factors that consider migratory needs, habitat linkage coordination, and cooperation with regional efforts to protect habitat.

INFILL DEVELOPMENT

Infill development is development that takes place within existing communities, making maximum use of the existing infrastructure instead of building on previously undeveloped land.

AGRICULTURAL INCENTIVE ZONING

Preserving rural character is a top priority for most small towns in New Hampshire, and the zoning statutes specifically state that “agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers...”

MINIMUM IMPACT DEVELOPMENT (SITE SCALE)

Minimum impact development is a community planning approach that balances “smart growth” principles, land and resource conservation, indoor environmental quality, and energy efficiency in order to minimize pollution, promote social capital, protect open spaces, and maintain connectivity between natural resources. At the site scale, minimum impact development design principles include incorporating a mix of uses, providing opportunities for mobility through and around the site, promoting social interaction through the location of social infrastructure such as benches or common dining areas, protecting existing resources such as trees or stone walls by drawing lot lines after key resources are identified, minimizing impervious surfaces, retaining natural vegetation wherever possible, and requiring non-invasive plantings where existing vegetation cannot be retained. Emphasis is placed on maximum on-site storm water infiltration and prevention of storm water runoff.

ENERGY-EFFICIENT DEVELOPMENT

Energy-efficient development incorporates site design techniques to take advantage of sun exposure, differences in microclimate and landscaping, as well as planning techniques that can be used in designing housing, deciding on density levels, integrating different land uses, and designing transportation and circulation systems. Energy-efficient planning techniques can be implemented through the use of traditional police power controls such as site plan regulations, zoning ordinances, and building codes.

TRANSIT-ORIENTED DEVELOPMENT

Transit-oriented development (TOD) encourages a mixture of residential, commercial, and employment opportunities within identified areas that have access to transit centers. TOD promotes development that supports transit by ensuring access to transit and attempts to limit conflicts between vehicles and pedestrians and transit operations. TOD allows for more intense and efficient use of land at increased densities for the mutual reinforcement of public investments and private development. Uses are regulated for a more intense built-up environment, oriented to pedestrian amenities, creating a more pleasant pedestrian environment without excluding the automobile. TOD is usually restricted to areas within walking distance to the transit station and can be new construction or redevelopment.

LIVABLE/WALKABLE DEVELOPMENT DESIGN

Designing communities as livable/walkable places means creating a balance among the economic, human, environmental, and social health of a community. Such development considers community planning and zoning practices at a human scale through the implementation of tools such as traffic

calming devices, street and intersection design, bicycle and pedestrian facility design, ADA requirements, and community beautification programs. Livable/walkable development practices protect natural resources by reducing the use of personal automobiles, support business by enabling people to access services locally, promote social capital by encouraging casual interaction, enhance personal physical fitness through increased activity, and diminish crime and other social problems by increasing the number of people on local streets.

ACCESS MANAGEMENT

Access management is the practice of coordinating the location, number, spacing and design of access points to minimize site access conflicts and maximize the traffic capacity of a roadway. Uncoordinated growth along major travel corridors can result in strip development and a proliferation of access points. In most instances, each individual development along a corridor has its own access driveway. Numerous access points along the corridor create conflicts between turning and through traffic that cause delays and accidents. Historically, transportation and access management plans concentrated primarily on the movement of vehicles. Current planning efforts focus on all modes of transportation including vehicles, public transit, bicycles and pedestrians.

DARK SKIES LIGHTING ORDINANCE

The purpose of a Dark Skies Lighting Ordinance is to lessen the impact of light pollution, to reduce the effects of unnatural lighting on the environment, and to reduce energy usage. There are a number of existing examples of these lighting ordinances throughout the country.

The NH Office of Energy and Planning's Resource Library offers useful information about outdoor lighting, light pollution, preserving "dark skies" and LED street lighting. These resources are available at NH OEP's website: <http://www.nh.gov/oep/resource-library/design-environment/index.htm>

GROWTH BOUNDARIES

Urban growth boundaries mark the separation between rural and urban lands by designating growth areas for development and creating economic incentive for development to take place within designated urban service areas. They are often related to or are a precursor to other sustainable development techniques such as brownfields development, infill development and transfer of density rights.

GROWTH MANAGEMENT

According to RSA 674:22, municipalities may regulate and control the timing of subdivision development with approval of the legislative body. Such ordinances may be considered only after a master plan and a capital improvements program have been adopted by the planning board and should be based on a growth management process intended to assess and balance community and regional development needs.

The growth management ordinance may only be adopted where there is a clearly demonstrated and documented need to regulate the timing or rate of development in order to allow municipal services to keep pace with growth. Therefore, the first step that should be taken by the planning board or governing body should be to prepare a study of the municipality's current and projected growth rates and its need for additional municipal services to accommodate such growth. The growth management ordinance should outline how the municipality will establish the needed community

services. This community services development plan should be prepared by the capital improvements program committee, if one has been established. Growth management ordinances must include a termination date and may not restrict growth any more than necessary for the municipality to catch up and make a good faith effort to provide the needed municipal services. The ordinance and community services development plan must be evaluated by the planning board at least once a year to confirm reasonable progress and report to the legislative body in the municipality's annual report.

Alternately, in unusual or under emergency circumstances, municipalities may adopt interim or temporary growth moratoriums (RSA 674:23). Such moratoriums may apply to the issuance of building permits or subdivision or site plan approvals for a period of no more than one year. A moratorium may be adopted by the legislative body so that the municipality may temporarily suspend development to allow time for the planning board to amend and update the zoning ordinance, master plan, or capital improvements plan in order to meet growth-induced community needs. The temporary growth ordinance must include a statement about the circumstances creating the need, the board's findings, the ordinance's term (maximum 1 year), the types of development the ordinance applies to, a description of the area and the course of action to alleviate the circumstances. The municipality may wish to exempt or create a special exception or conditional use permit to allow development that may have minimal or no impact on the circumstances.

Municipalities that adopted growth management ordinances before July 11, 2008 were given until June 1, 2010 to amend their ordinances to conform to changes in the growth management statutes. If a municipality adopted an interim growth management ordinance under RSA 674:23 prior to July 11, 2009, that ordinance shall remain in effect until one year after its passage or until the municipality's next annual meeting.

WORKFORCE HOUSING

RSA 674:58-61 codifies the holdings of *Britton v. Chester*, a case decided by the New Hampshire Supreme Court in 1991. It requires all municipalities' land use ordinances to provide "reasonable opportunity" for the development of workforce housing, including rental housing. Key here is a set of definitions and standards to assess "reasonable opportunity." The law creates an expedited process to allow for redress. The municipality is enabled to choose how to provide a "reasonable opportunity" for workforce housing and where it may be permitted. The statute requires that workforce housing be allowed within a majority of the land areas where residential uses are permitted and also allow rental multi-family housing, although this does not have to be allowed in a majority of residential zones.

Municipalities may require workforce housing applicants to record restrictive covenants that ensure the continued or long-term affordability of the proposed units. The local land use board may adopt regulations specifying the term for such covenants and may also include means of monitoring to ensure compliance.

Applicants proposing to develop workforce housing that are denied, or have conditions placed upon approval that jeopardize the development's affordability, may appeal and be heard either by the superior court or a court-appointed referee within six months. For additional information about the workforce housing law, see the Affordable/Elderly/Workforce Housing subject heading in the on-line OEP Resource Library: <http://www.nh.gov/oep/resource-library/housing/index.htm>.

Additionally, pursuant to RSA 673:4-c, municipalities are enabled to create local housing commissions. This local land use board serves as an advocate for housing issues and housing affordability. Local housing commissions have the power to administer an affordable housing revolving fund that could be used to facilitate affordable housing transactions.

INTEGRATED LAND DEVELOPMENT PERMIT

In 2013, RSA 674:21 (Innovative Land Use Controls) was amended to add an “integrated land development permit option” to allow a project to proceed, in whole or in part, as permitted by the NH Department of Environmental Services (DES) under RSA 489.

An applicant for approvals or permits under two or more DES permit programs may apply for an integrated land development permit in lieu of all individual permits such as wetlands, shoreland and alteration of terrain permits. Municipalities may participate in the process with the consent of the applicant and/or at the invitation of DES.

RSA 674:21, VII also authorizes a municipality to adopt an innovative land use control ordinance allowing the planning board to approve a project that does not fully conform to the local zoning ordinance if it has been approved by DES under the integrated land development program.

In 2014, the legislature delayed implementation of the DES integrated land development permit program until July 1, 2017.